

**Downtown Ford Sales and Steve Thompson**

**Downtown Ford Sales, Employer-Petitioner and Teamsters Professional, Public, Medical, Automotive and Miscellaneous Employees, Local 165, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Cases 20-CA-15765 and 20-RM-2346**

February 19, 1982

**DECISION, ORDER, AND  
CERTIFICATION OF RESULTS OF  
ELECTION**

**BY CHAIRMAN VAN DE WATER AND  
MEMBERS JENKINS AND HUNTER**

On October 1, 1981, Administrative Law Judge Richard D. Taplitz issued the attached Decision in this proceeding. Thereafter, the Charging Party filed exceptions and a supporting brief, and Respondent filed an answering brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs, and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge and to adopt his recommended Order.

**ORDER**

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the complaint be, and it hereby is, dismissed in its entirety.

**CERTIFICATION OF RESULTS OF  
ELECTION**

It is hereby certified that a majority of the valid ballots have not been cast for Teamsters Professional, Public, Medical, Automotive and Miscellaneous Employees, Local 165, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and that said labor organization is not the exclusive representative of all the employees, in the unit herein involved, within the meaning of Section 9(a) of the National Labor Relations Act, as amended.

**DECISION**

**STATEMENT OF THE CASE**

RICHARD D. TAPLITZ, Administrative Law Judge: These consolidated cases were heard in Sacramento, California, on May 12, 1981.

The charge in Case 20-CA-15765 was filed on October 24, 1980, by Steve Thompson, an individual. The complaint, which issued on December 18, 1980, alleges that Downtown Ford Sales, herein called the Company, violated Section 8(a)(1) and (3) of the National Labor Relations Act, as amended.

On January 23, 1981, the Company filed a petition for an election in Case 20-RM-2346. Teamsters Professional, Public, Medical, Automotive and Miscellaneous Employees, Local 165, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein called the Union, was the incumbent Union. Pursuant to a Stipulation for Certification Upon Consent Election approved by the Acting Regional Director of Region 20 on February 13, 1981, an election by secret ballot was conducted on March 13, 1981, among the employees of the Company in an agreed-upon appropriate bargaining unit.<sup>1</sup> The tally of ballots, which was served on the parties immediately following the election, showed that of approximately seven eligible voters, seven cast ballots of which three were for the Union, three were against the Union, and one was challenged. The challenge was therefore critical in determining the outcome of the election. The challenged ballot was cast by Steve Thompson. The complaint in Case 20-CA-15765 alleges that Thompson was discharged in violation of Section 8(a)(3) of the Act before the date of the election. On April 9, 1981, the Acting Regional Director for Region 20 issued his Report on Challenged Ballot, Order Consolidating Cases, and Notice of Hearing in which it was ordered that a hearing be held to resolve the issues raised by the challenged ballot and that the hearing be consolidated with the hearing in Case 20-CA-15765 to be held before an administrative law judge. The Acting Regional Director requested the Administrative Law Judge to prepare and cause to be served on the parties a report containing resolutions of the credibility of witnesses, findings of fact, and recommendations to the Board as to the disposition of the challenged ballot.

**Issues**

The primary issues are:

1. Whether the Company through its vice president and general sales manager, Steve Pleau, violated Section 8(a)(1) of the Act on July 30, 1980, by threatening to discharge Steve Thompson unless he withdrew a grievance he had filed with the Union.
2. Whether the Company violated Section 8(a)(1) and (3) of the Act on July 31, 1980, by discharging Thompson because he refused to withdraw that grievance.

<sup>1</sup> The bargaining unit was: All automotive maintenance specialists, combination employees, miscellaneous employees, recreational vehicle employees, and tow truck employees, excluding clerical employees, machinists employees, guards, sales employees, and supervisors as defined by the Act.

3. Whether the challenge to Thompson's ballot should be sustained.

All parties were given full opportunity to participate, to introduce relevant evidence, to examine and cross-examine witnesses, to argue orally, and to file briefs. Counsel for the General Counsel and for the Company argued orally at the close of the hearing. No briefs were filed.

Upon the entire record in the case and from my observation of the witnesses and their demeanor, I make the following:

#### FINDINGS OF FACT

##### I. THE BUSINESS OF THE COMPANY

The Company, a California corporation with an office and place of business in Sacramento, California, is engaged in the retail sale and service of motor vehicles. During the calendar year immediately preceding issuance of complaint, the Company derived gross revenues in excess of \$500,000 and during that same period of time purchased and received at its Sacramento, California, facility goods valued in excess of \$5,000 directly from points outside California. The complaint alleges, the Company admits, and I find that the Company is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

##### II. THE LABOR ORGANIZATION INVOLVED

The Union is a labor organization within the meaning of Section 2(5) of the Act.

##### III. THE ALLEGED UNFAIR LABOR PRACTICES

###### A. Background

The Company had a collective-bargaining agreement with the Union that was effective by its terms from January 1, 1978, to December 31, 1980.

Steve Thompson was hired by the Company in June 1978 as an automotive maintenance specialist at \$6.92 an hour. He worked as a lube man and performed light mechanical jobs such as oil changes, lubrications, and transmission servicing. He was the only company employee in that classification. In April 1980 there was not enough work to keep Thompson fully occupied and on April 30, 1980, he, along with other employees, was laid off. There is no contention that the layoff was unlawful under the Act.

Thompson was a member of the Union and was covered by the Union's contract. The Company also has a contract with the Machinists Union. After his layoff Thompson made inquiries concerning the type of work being done by employees represented by the Machinists Union.

On June 20, 1980, Thompson went to the Union's office and spoke to the secretary-treasurer, Vern Shorey. At that time he submitted a written statement requesting that grievance procedures be taken against the Company. In that statement he contended in substance that the Company violated the contract by laying him off and assigning work that he should have performed to members of the Machinists Union. Shorey assigned the matter to Union Business Representative Jean Starns for process-

ing. Pursuant to the Union's outstanding policy Starns did not show Thompson's June 20 written statement to the Company but did make inquiry of the Company concerning the matter. On June 30, 1980, Starns notified Thompson that the June 20 grievance had been investigated, that the investigation indicated that there was not enough work of the sort that Thompson did to warrant recall from layoff, and that as far as Starns was concerned the grievance was closed.<sup>2</sup>

The Company has weekly management meetings. At one of those meetings in July 1980 it was decided to recall one laid-off employee for a 6-week period to fill in for another employee who was taking a leave of absence. The job opening was for a lot position which primarily involved the washing of cars and keeping the lot clean. It paid \$6.67 an hour. Thompson was offered that job on the basis of his seniority ranking.<sup>3</sup> Thompson was offered that position and he accepted it. He returned to work on July 21, 1980, even though the job involved less skills than those of a lube man and even though his pay was 25 cents an hour less than he had previously earned. However he was overtly dissatisfied with the new job. On July 23, 1980, Thompson asked the Company's vice president and general sales manager, Steve Pleau,<sup>4</sup> when he would be returned to work in the shop. Pleau said that there were not enough jobs and he could not guarantee whether or not Thompson would return to that position. Shortly after the recall Thompson complained about his new job on the lot to Assistant Service Manager Terry Conroy.<sup>5</sup> Thompson said that he was a lube man, that he did not want to wash cars, and that he was too good to be washing cars. Conroy also received reports that Thompson was complaining to the mechanics who were ribbing him because he was washing cars. On or about three occasions Conroy saw Thompson in the shop area talking to mechanics when Thompson was supposed to be washing cars in a different area. On all three occasions mechanics complained to Conroy that Thompson kept talking to them when they were trying to work. On two occasions Conroy saw Thompson in

<sup>2</sup> On October 21, 1980, Starns wrote Thompson as follows:

This is a follow-up of our telephone conversation of October 20, 1980. I spoke with you then in response to your office visit of October 17, 1980.

At that time (October 17th) you indicated to me that the National Labor Relations Board had told you that this local could attach Downtown Ford's records to investigate whether or not there was enough work being done to warrant recalling you from lay-off.

As I indicated to you on June 30th and on October 17th and again on October 20th, the grievance you filed on June 20th was timely and was investigated by Vern Shorey, Art Rose and myself in a timely and proper fashion. The results of the investigation were given to you on June 30th. These results indicated there was not enough work, of the sort you do, to warrant a recall from lay-off.

As far as I am concerned, at this time, the grievance is closed as I indicated to you on June 30, 1980.

I recognize you are seeking your job back, but the previous grievance you filed is not the route to go.

<sup>3</sup> There is no contention that the failure to recall Thompson before that time or that the recall itself was in violation of the Act.

<sup>4</sup> That was Steve Pleau's position during all times relevant hereto. The complaint alleges, the answer admits, and I find that he was a supervisor and agent of the Company within the meaning of the Act.

<sup>5</sup> Conroy was also dispatcher and service advisor.

the dispatch office looking at records. Conroy told Thompson that he was not supposed to be there and he was supposed to be out washing cars.

Toward the end of July Conroy reported the above incidents to Steve Pleau. He told Pleau that Thompson was unhappy with his work, was complaining, and was wandering around the shop talking to mechanics. As a result of the reports that he had received, Steve Pleau had a conversation with Thompson on July 30, 1980. The conversation is discussed in section B below.

Shortly after his recall Thompson examined the dispatcher's repair log sheets and he decided that there were a sufficient number of jobs to require his being rehired as a lube man. He went to the union hall and reported that to the Union's secretary-treasurer, Shorey. Shorey called the Company's president, Gene Pleau,<sup>6</sup> and told him that he had been informed that there were enough jobs being done in the shop for Thompson to return. He asked Gene Pleau whether it was true or false. After the conversation, Shorey told Thompson that Gene Pleau had denied that there were enough jobs.<sup>7</sup> That conversation took place shortly after Thompson was recalled. Not long thereafter Thompson again looked at the log sheets and again came to the conclusion that there were enough jobs being done by the Machinists Union for him to be recalled. He again returned to the Union and told Shorey that there was enough work for him. Shorey called Gene Pleau and said that it had come to his attention that the Company's worksheets revealed more jobs than the Union had been led to believe. Pleau said, "I'll put you on hold. There seems to be a nigger in the woodpile somewhere." After a short time Pleau came back on the phone and read off some figures to Shorey. Shorey asked whether he could see the records and Pleau replied something to the effect that the Company did not have the records the Union was looking for.<sup>8</sup> There is no evidence that the Union took any further action on the Thompson matter until substantially after Thompson left the Company's employ on July 31, 1980.<sup>9</sup>

<sup>6</sup> Gene Pleau is Steve Pleau's father. It is admitted and I find that Gene Pleau is a supervisor and agent of the Company.

<sup>7</sup> This finding is based on the testimony of Thompson. Gene Pleau did not testify and Shorey testified that he could only recall one conversation with Gene Pleau, which is set forth below.

<sup>8</sup> At first Shorey testified that Pleau told him "no" when he asked to see the records. Later in his testimony Shorey averred that Pleau told him the Company did not have the records Shorey was looking for or that there were no records available for the Union.

<sup>9</sup> After he left the Company's employ, Thompson continued to press the Union to take action. On October 21, 1980, the Union sent Thompson the letter that is quoted in fn. 2, above, which indicated that the Union considered Thompson's grievance closed as of June 30, 1980. On October 24, 1980, Thompson filed an unfair labor practice charge against the Union alleging that the Union was failing to represent him fairly. The Union agreed to proceed with Thompson's claim and Thompson withdrew the unfair labor practice charge. Later the Union filed a lawsuit against the Company to force the Company to go to a board of adjustment. As of the date of the hearing in the instant case a hearing before a board of adjustment had been scheduled but had not yet taken place.

#### *B. The July 30, 1980, Conversation Between Steve Pleau and Thompson—The 8(a)(1) Allegations—Facts and Conclusion*

Paragraph 9 of the complaint alleges that on July 30, 1980, the Company through Steve Pleau threatened to discharge Thompson unless Thompson withdrew a grievance. Thompson and Pleau did have a conversation on that date. Thompson testified to facts that would indicate that an unlawful threat was made and Pleau testified to the contrary. There was no one else present during that conversation and the issue rests squarely on the question of whether to believe Thompson or Pleau.

Thompson's version of the conversation was as follows. Thompson was working in the supply room located in the used-car lot at 4 p.m. on July 30, 1980, when Steve Pleau came into the room. Pleau asked Thompson what Thompson's problem was and Thompson replied that he did not have a problem. Pleau said that Thompson should be happy to be working and that the Company could have hired someone off the street to wash cars. Thompson replied that at age 24 he saw no glory in washing cars and that he already had 2 years' employment in the shop with no one complaining about his ability. Pleau said that there was no work in the shop that required his services and Thompson asked why he had not been considered for two positions that had been filled by journeymen mechanics. Pleau replied that the Company felt he did not have the required ability to perform those jobs. Thompson said that until the Company proved to him and the Union through documentation that there was not enough work that he was not going to drop any grievance. Pleau replied that Thompson had overnight to consider the situation and that Thompson would be out of work unless he dismissed the grievance and stopped hassling the Company with the Union.

Pleau's version of the incident was as follows. Pleau spoke to Thompson on July 30 because of the reports that Pleau had received from Conroy to the effect that Thompson was unhappy with his job and had been complaining to different people in the shop. Steve Pleau knew that Union Business Agent Starns had called the Company and spoken to his father sometime before but as far as he knew a grievance was never filed and he was unaware that Shorey had called. He knew of no problem at that point with regard to the April 30 layoff of Thompson. Based on the reports he had received from Conroy about Thompson's being unhappy with the work, Pleau asked Thompson what the problem was and why Thompson could not perform the job as outlined in the Union's agreement. Thompson complained of financial problems and his inability to move up in the shop and Thompson asked why he had been passed up for a mechanic's position. Pleau told him that his job qualifications were not such as to make the Company feel that he was capable of handling the work. Thompson said that he thought a lot boy's job was a step in the opposite direction and that he was not progressing. Pleau replied that the economic situation was such that a number of people were having to do jobs that they did not care for. Pleau said that the particular job that Thompson had was available to him for about 6 weeks because another

union member with more seniority was on leave of absence and there were no guarantees that Thompson was going to be a mechanic or would go back to the lube rack. Pleau also said that he could not predict the economy and there would have to be a lot of adjustments. He said he could not make any guarantees about the future but that right then there were 6 weeks of work and he would like Thompson to do the job as it stood. Thompson remarked that he had been to the Union and that he felt the Company was giving his work away to the machinists. He told Pleau that he wanted to go back to doing the lube work. Pleau said that the Company did not have enough work for Thompson at the lube rack on a full-time basis, that in the past Thompson had left after 2 or 3 hours on the lube rack, that now Thompson had full time employment for at least 6 weeks, that things could change for the better, and that Thompson was better off the way he was than with intermittent employment. Pleau said that he wanted the complaining about the type of work to end and he wanted Thompson just to do the job under the contract. He also told Thompson that he could not change the job and that it was up to Thompson to decide whether Thompson wanted to continue to work there or wanted to leave. Thompson said that he would have to think about it. The word "grievance" was not mentioned in the conversation and Pleau did not say anything about firing Thompson if Thompson did not stop making trouble.

As between Pleau and Thompson I credit Pleau. Pleau's demeanor on the stand was such as to instill confidence in his credibility. That was not true with regard to Thompson. In addition the surrounding circumstances give support to Pleau's contention. The complaint that Thompson had filed with the Union was not shown to the Company. As far as the Company knew there was no problem except for the fact that the Union had made certain inquiries concerning Thompson. In fact the Union had dropped the grievance before Thompson was recalled and it was not reactivated until Thompson left the Company's employ. The renewed questioning of the Company by a union agent after the recall did not appear to pose a serious threat to the Company or give it a motive for discharging an employee who was scheduled to be leaving in any event in a month when the person he was replacing returned from leave of absence. Furthermore Thompson demonstrated in his testimony that he was not overly dedicated to the accuracy of his facts. He made some misstatements concerning his former employment on his application for employment with the Company. He testified that a former girl friend had filled in the application, that he had just signed it, and that he was not sure whether he had reviewed it or not. He acknowledged that some of the statements in the application were incorrect. His casual attitude toward accuracy was reflected by his testimony that he only looked over the application briefly because he had obtained the job through a personal friend of the service manager and he would have gotten it even if the piece of paper were blank. Thompson's credibility was also not enhanced by his propensity to exaggerate his ability as a mechanic. He testified that he considered himself a journeyman mechanic in areas that he knew best and then he

went on to aver that a journeyman needed 4 years of apprenticeship, which he did not have. His testimony indicated that both his experience and his skills as a mechanic were limited.

In sum I credit Pleau's version of the conversation and I do not credit Thompson. There is, therefore, no credible evidence that Pleau threatened to discharge Thompson unless Thompson withdrew his grievance and I recommend that paragraph 9 of the complaint be dismissed.

#### *C. The July 31, 1980, Conversation—The 8(a)(3) Allegations—Facts and Conclusion*

Paragraph 10 of the complaint alleges that on July 31 the Company discharged Thompson because of Thompson's union or other protected activity. Once again there is a sharp conflict in the testimony of Thompson and Pleau.

Thompson testified as follows. At 8 a.m. on July 31 he was paged by Pleau to report to Pleau's office. No one else was present. Pleau asked Thompson what Thompson's decision was. Thompson replied by saying that, until the Company proved to him and the Union that his grievance was false and that there was not enough work, he was not going to dismiss any grievance. Pleau said, "I'm sorry, you feel that way. I guess that's it." Thompson then punched out and went home.

Pleau testified to the following. In the early morning of July 31 Thompson came into the used-car office and spoke to Pleau. No one else was present. Thompson said that he had decided that he did not want to wash cars. Pleau told Thompson that some work was better than none if he were financially distressed and he asked Thompson whether Thompson had another job to go to. Thompson said that he had not. Thompson also said that he did not think he wanted to continue doing what had been assigned to him as he had been given no guarantees about the future or about when he would get back his old job. Pleau asked whether that meant that Thompson was quitting and Thompson said that it did. Thompson turned around and left the office.

For the reasons set forth in the section above, I believe that Pleau was a more credible witness than Thompson. I therefore credit Pleau's testimony which indicates that Thompson voluntarily quit his employment and I discredit Thompson's testimony which indicates that he was discharged.<sup>10</sup>

Based on the findings above I conclude that there is no credible evidence that Thompson was discharged or constructively discharged and I therefore recommend that part of the complaint which alleges that Thompson was discharged because of his union or other protected activity be dismissed.

#### *D. The Challenged Ballot*

Having found that the General Counsel has failed to establish that Thompson was discharged in violation of

<sup>10</sup> Thompson testified that shortly after his conversation with Pleau on July 31, he told fellow employee Tony Martinez that he had been fired by Pleau. Martinez corroborated that testimony and it is credited. While that evidence establishes that Thompson's claim was not recently fabricated, it does not establish that the claim is true.

the Act and having found that he was no longer an employee at the time of the election on March 13, 1981, I recommend that the challenge to his ballot be sustained. I also find that a majority of the votes cast in the election were not cast for the Union, and I therefore recommend that the results of the election be certified.

#### CONCLUSIONS OF LAW

1. The Company is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. The Company has not engaged in the unfair labor practices alleged in the complaint.

4. The challenge to the ballot of Thompson has been sustained.

5. A majority of the votes cast in the election were not cast for the Union.

Upon the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

#### ORDER<sup>11</sup>

The complaint is dismissed in its entirety.

IT IS FURTHER RECOMMENDED that the challenges to the ballot of Steve Thompson be sustained in connection with the election held on March 13, 1981, in Case 20-RM-2346, and that the results of that election be certified.

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<sup>11</sup> In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.